

Virginia

Employer's Handbook



A guide to an employer's rights and responsibilities under the Virginia Unemployment Compensation Act

July 2009

INTRODUCTION

The *Virginia Unemployment Compensation Act* (Title §60.2 of the *Code of Virginia*) contains the provisions under which Virginia's Unemployment Insurance Program is administered. Stemming from this Act is the *Regulations and General Rules Affecting Unemployment Compensation*, sections of which are cited in this handbook (Regulation 16 VAC). The *Unemployment Compensation Act* is available online at <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC6002000>.

This handbook is an attempt to explain the various statutory and procedural aspects of the program in non-technical terms. It does not have the effect of law and should not be so construed. Each passage of the handbook references the appropriate section of the Code or applicable regulation. Questions related to the program can be addressed to staff at any of the VEC Workforce Centers or to the appropriate section of our Richmond administrative office. Additional employer, job seeker, claimant, and labor market information is available on the VEC website at: www.VaEmploy.Com.

VIRGINIA EMPLOYER TAX RATE INFORMATION

VEC Tax Rate Information	2009	2008	2007	2006
Minimum Computed Tax Rate	.18%	.12%	.17%	.29%
Maximum Computed Tax Rate	6.28%	6.22%	6.27%	6.39%
Assigned New Employer Tax Rate	2.58%	2.52%	2.57%	2.69%
Pool Cost Charge	.08%	.02%	.07%	.19%
Fund Building Charge	n/a	n/a	n/a	n/a

TAX INFORMATION

Display of Posters

Employers shall post and maintain in a place readily accessible to employees any poster furnished by the Virginia Employment Commission relating to unemployment insurance. Also, if an employer is later determined not liable, the poster must be removed. §60.2-106. A list of required posters (both Virginia and Federal) is available at <http://www.vec.virginia.gov/vecportal/employer/pdf/RequiredEmployerPosters5-09.pdf>

Who Is Liable?

Not all employing units in Virginia are subject to the taxing provisions of the unemployment compensation law. Coverage (tax liability) is determined by the number of workers employed, the duration and nature of services performed, and the amount of wages paid for services in employment. Once the liability conditions are met for your type of employment, you are required to report the total payroll for the entire year, by quarter, and pay the appropriate amount of taxes. Regulation 16 VAC 5-20-10

You are automatically liable for coverage if you:

- acquire a business, which is liable under the law; (You also may be responsible for any sum owed by the seller.)
- are liable to the federal government for Federal Unemployment Tax (FUTA);
- are a state, local government, or political subdivision. §60.2-210

Most employers are liable if you have one or more employees who work for any portion of a day in twenty different weeks in a calendar year, or if your total gross payroll for any calendar quarter is \$1,500 or more. §60.2-210. The exceptions are domestic, nonprofit or agricultural employing units.

Agricultural employing unit: you are liable if you employ ten or more workers for some portion of a day in twenty different weeks during a calendar year or if you have a payroll of \$20,000 or more in a quarter. Either the farm operator or the crew leader can be the employer.

A farm operator is the employing unit if:

- The individual is an employee of the farm operator or
- The worker is furnished by the crew leader but is not treated as an employee of the crew leader, that is, the crew leader is acting on behalf of the farm operator rather than as an employer or
- The crew leader has entered into a written agreement with the farm operator under which the crew leader is designated as an employee of the farm operator.

A crew leader is the employing unit if:

- The crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Workers Protection Act of 1983 or
- Substantially all crew members operate or maintain tractors, mechanized harvesting or crop-dusting equipment or any other mechanized equipment provided by the crew leader, and
- The individual is not an employee of any other person. §60.2-214

The services of alien workers are counted in determining your liability and those wages must also be reported. The Migrant and Seasonal Agricultural Act is available online at <http://www.dol.gov/dol/compliance/comp-msawpa.htm>

Domestic service or household employing unit: you are liable if you paid wages of \$1,000 or more in wages in a quarter. The following occupations are usually considered as domestic service in private households, local college club or local chapter of a college fraternity or sorority:

- Nanny, babysitters, sitters,
- Cooks, laundresses, maids
- Butlers, personal secretaries, managers of personal affairs, companions, porters, and nurses.
- Caretakers, chauffeurs, and other maintenance workers

Example: If you hire a nanny to take care of your children in your home this person is your employee and you are required to file and pay taxes. Please see the IRS and State taxation websites for additional information regarding other tax liability.

Reimbursable Employers - The drawback to the reimbursable method is that the reimbursable employer may not be the separating employer, yet can be held responsible for benefits paid. If it is not the separating employer, only the computation of the bill can be appealed and not the reasons for the claimant's separation from his employment.

Governmental and nonprofit organizations described in Section 501 (c)(3) of the Internal Revenue Code may choose either to pay taxes quarterly or to reimburse the Commission dollar-for-dollar for their proportionate share of benefits paid. All state agencies are reimbursable by order of the Governor. Liability is based on the reimbursable employer's share of wages used to compute the claim. The drawback to the reimbursable method is that the reimbursable employer may not be the separating employer, yet can be held responsible for benefits paid. If it is not the separating employer, only the computation of the bill can be appealed and not the reasons for the claimant's separation from his employment.

If the reimbursable method is chosen, it remains in effect for a minimum of one calendar year. The method can be changed by writing a letter, which must be received no later than December 1, to:

Virginia Employment Commission
Employer Accounts Unit Room 108
Post Office Box 1358
Richmond, VA 23218-1358

A reimbursable employer is notified by the form "Notice of Benefit Liability," VEC-B-30R, of potential liability when a claimant files a claim using wages earned in reimbursable employment. A "Quarterly Reimbursable Billing," VEC-B-47, is sent informing the employer of the amount due as a result of benefits paid. Appeals must be filed within thirty days from the date of billing. Reimbursable employers must submit a quarterly payroll even though no tax is due. Regulation 16 VAC 5-32-20

In order to qualify as a nonprofit organization for unemployment insurance purposes, you must have been granted a 501 (c) (3) exemption by the Internal Revenue Service. To be tax-exempt under § 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for purposes set forth in § 501(c)(3), and none of its earnings may inure to any private shareholder or individual. The exempt purposes set forth in § 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals. The application for 501(c)(3) status is Form 1023, Application For Recognition of Exemption, at <http://www.irs.gov>.

You are liable for unemployment insurance tax if you employ four or more workers in any portion of twenty different weeks in a calendar year. Non-profit organizations that are liable have the option to be tax paying or reimbursable. §60.2-213 A, §60.2-501. Effective July 1, 2005, the *Code of Virginia* changed - §60.2-212 of the *Code of Virginia* was amended and reenacted as follows:

A. "Employment" means:

1. Any service including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied; and
2. Any service, of whatever nature, performed by an individual for any employing unit, for remuneration or under any contract of hire, written or oral, and irrespective of citizenship or residence of either,
 - a. Within the United States, or
 - b. On or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the individual is employed on the vessel or aircraft it touches at a port in the United States, if such individual performs such services on or in connection with such vessel or aircraft when outside the United States, provided that the operating office, from which the operations of the vessel or aircraft are ordinarily and regularly supervised, managed, directed or controlled, is within the Commonwealth.

- B. Notwithstanding subdivision 2b of subsection A of this section, "employment" means all service performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this the Commonwealth.
- C. Services performed by an individual for remuneration shall be deemed to be employment subject to this title unless the Commission determines that such individual is not an employee for purposes of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, based upon an application of the 20 factors set forth in Internal Revenue Service Revenue Ruling 87-41, issued pursuant to 26 C.F.R. 31.3306(i)-1 and 26 C.F.R. 31.3121(d)-1.
- D. Notwithstanding the provisions of subsection C, an individual who performs services as a real estate salesperson, under direction of a real estate broker under Chapter 21 (§54.1-2100 et seq.) of Title 54.1, or as a real estate appraiser under Chapter 20.1 (§54.1-2009 et seq.) of Title 54.1 pursuant to an executed independent contractor agreement and for remuneration solely by way of commission or fee, shall not be an employee for purposes of this chapter.

Those services that are not part of the regular operation of the business are generally considered outside the usual course of the business. An established business within the meaning of the Code is one that is permanent, fixed, stable, or lasting. There are some things that you can do which may help you in determining if a person is a bona fide independent contractor.

First:

- Ask for his federal and state identification numbers;
- Look at his business license;
- Ask for his business calling card;
- Determine if he is listed in the business section of the local telephone directory;
- Ask for the names of other customers
- Review the IRS 20 factors to assist in determining liability at:
<http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>

Then:

Call your nearest VEC Workforce Center and ask the Tax Representative to review your operations and render a determination. The list of VEC offices is available on line at: http://www.vec.virginia.gov/vecportal/field/field_offices.cfm

Localized & Non-localized Employment

Sometimes employees work in more than one state. As a result, some confusion may occur as to where to report their wages. The following is a general guide to determine where to report wages. Once a condition is met as outlined below, wages are reported to that state and you need not go further to determine the liable state.

- If all work was performed in Virginia, then wages are reported to Virginia.
- If the work was performed in Virginia as well as in another state, the employee's base of operations (home office or branch office) plays a factor on where his wages are reported. In most instances, the state in which the employee's home office or branch office is located is where the wages are reported. The exception here, however, is where the work performed in the home office or branch office is incidental or transitory in nature (for example, attendance at occasional meetings). In determining incidental or transitory service, the intent of the work must be reviewed. If the transaction was part of the employee's normal work, then it would not be incidental. Also, the length of service with the employer within Virginia as compared to the length of service outside the state is considered. Because variations occur, no fixed length of time can be used to determine incidental or transitory service.
- In the instance where no work is performed in the home office or branch office state, then residence becomes the determining factor on where to report the wages. An example would be an employee who lives in Virginia, whose territory covers more than one state, and who performs no work in the home office or branch office state other than incidental. In this instance, wages are reported to Virginia, the place of residence. §60.2-217

Non-covered Employment

Services not included in term "employment."

The term "employment" shall not include:

1. Service performed in the employ of the United States government or of any instrumentality of the United States which is wholly or partially owned by the United States or which is exempt from the tax imposed by § 3301 of the Federal Internal Revenue Code by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;
2. Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress, including service performed after June 30, 1939, for an employer determined to be subject to the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) by the agency or agencies empowered to make such determination by an act of Congress, and service as an employer representative determined to be subject to such act by such agency or agencies.
3. Agricultural labor as defined in § [60.2-201](#) except as provided for in § [60.2-214](#);
4. Domestic service in a private home, local college club or local chapter of a college fraternity or sorority except as provided for in § [60.2-215](#);
5. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft by an employee, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;
6. Service performed by an individual in, or as an officer or member of the crew of, a vessel while it is engaged in the catching, taking, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except (i) service performed in connection with the catching or taking of salmon or halibut for commercial purposes and (ii) service performed on or in connection with a vessel of more than 10 net tons, determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States;
 - 6a. Service performed by an individual on a boat engaged in catching fish or other forms of aquatic life under an arrangement with the owner or operator of such boat pursuant to which:
 - (1). Such individual does not receive any cash remuneration, other than as provided in subdivision b of subsection 6a;
 - (2). Such individual receives a share of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life, or a share of the proceeds from the sale of such catch; and
 - (3). The amount of such individual's share depends on the amount of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life, but only if the operating crew of such boat, or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat is normally made up of fewer than 10 individuals;
7. Service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of 21 in the employ of his father or mother;
8. Service performed in any calendar quarter in the employ of any organization exempt from income tax (i) under § 501 (a) of the Federal Internal Revenue Code (26 U.S.C.), other than an organization described in § 401 (a) of such Code, or (ii) under § 521 of the Federal Internal Revenue Code, if the remuneration for such service is less than \$50;
9. Service performed in the employ of a school, college or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university;
10. Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law;
11. Service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

12. Service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

13. Service performed by an individual for an employing unit as a real estate salesman, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

14. Service covered by an arrangement between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law;

15. Service performed by an individual for an employing unit as an agent in the wholesale distribution and sale of gasoline and other petroleum products, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

16. Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For the purposes of this subdivision, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (i) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (ii) such individual was regularly employed, as determined under clause (i) of this subdivision, by such employer in the performance of such service during the preceding calendar quarter;

17. a. Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on. In order for such services to be excluded from "employment":

(1) The individual shall be enrolled as a student in a full-time program,

(2) The program shall be taken for credit at such institution,

(3) The program combines academic instruction with work experience, and

(4) Such service shall be an integral part of such program.

b. Such institution shall certify to the employer that subsections 17 a (1) through 17 a (4) of this section have been complied with.

c. This subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers

18. Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in § [60.2-221](#);

19. Services provided by an individual pursuant to an agreement among the service recipient, a public human services agency as defined in § [15.2-2811](#), and such individual to an eligible service recipient in his own home or the home of the service provider, unless coverage of such services is required by the provisions of § 3304 (a) (6) (A) of the Federal Unemployment Tax Act;

20. Services performed by an individual as a "direct seller" provided that:

a. Such person:

(1) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary of the Treasury prescribes by regulations for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment;

(2) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products to a consumer in the home or otherwise than in a permanent retail establishment; or

(3) Is engaged in the trade or business of the delivery or distribution of newspapers or shopping news (including any delivery services directly related to such trade or business).

b. Substantially all of the remuneration for the services performed as a direct seller, whether or not paid in cash, is directly related to sales or output, including the performances of services, rather than to the number of hours worked;

c. The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes;

21. Service performed after July 1, 1984, by an individual as a taxicab driver, or as a driver of an executive sedan as defined in § [46.2-2000](#), provided the Commission is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax Act;

22. Services performed by an individual as a "contract carrier courier driver" provided the Commission is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax Act;

23. Services performed by a full-time student in the employ of an organized camp if such camp:

(1) Did not operate for more than seven months in the calendar year and did not operate for more than seven months in the preceding calendar year; or

(2) Had average gross receipts for any six months in the preceding calendar year which were not more than 33 1/3 percent of its average gross receipts for the other six months in the preceding calendar year; and

b. Such full-time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year;

24. Services performed by an individual as a court reporter for an employing unit if all such service performed by the individual for the employing unit is performed for remuneration solely by way of commission;

25. Services performed by an individual as a cosmetologist or as a barber provided the Commission is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax Act;

26. Services performed by a licensed clinical social worker as defined in § [54.1-3700](#), licensed psychologist as defined in § [54.1-3600](#), licensed professional counselor as defined in § [54.1-3500](#), licensed psychiatrist, or licensed marriage and family therapist as defined in § [54.1-3500](#), if such individual:

a. Operates under a contract specifying that the individual is free from control or direction over the performance of such services;

b. Is licensed in the Commonwealth to perform independent clinical services;

c. Is compensated solely by way of fees charged for services rendered by such individual; and

d. Has a valid business license issued by the locality in which such individual performs such services; and

27. Services performed by an inmate for a penal or custodial institution or while participating in the Diversion Center Incarceration Program pursuant to § [19.2-316.3](#).

Voluntary Election of Coverage

Employing units that are not subject to the taxing provisions of the law may submit an application for voluntary election of coverage to the Virginia Employment Commission. If the Commission approves the application, the employing unit becomes liable for at least two full calendar years and is bound by the laws and regulations in the same manner as other covered employers. The election will be approved beginning with the current year. §60.2-510

Successors

An individual or employing unit is termed a successor upon acquiring the organization, trade, or business of another (the predecessor). If the law covered the predecessor, the successor is automatically covered regardless of the number of workers in its employ. The successor may be held responsible for sums owed by the predecessor. The amount will not

exceed the value of the acquired assets. §60.2-210, §60.2-523

Termination

An employing unit remains liable from year to year until officially released by the Commission. An employer may request in writing that its account be terminated provided its account reflects that the preceding year's employment experience warrants termination. §60.2-509

Unemployment Taxable Wage Base

You pay state unemployment tax only on the first \$8,000 of wages earned for each employee during a calendar year.

Wages

The term "wages" for the purpose of unemployment insurance means:

- all sums payable, including wages, salary, commissions, and tips;
- cash value of all other forms of remuneration, such as board and lodging; (The value of meals and lodging furnished should not be included if furnished at the employer's premises for the convenience of the employer.) §60.2-229, Regulation 16 VAC 5-10-10
- special payments such as annual bonuses, severance pay, and back pay. §60.2-229(A)

Sick Pay-Under a Plan

Payments by an employer to a worker for sickness or accident disability that are paid under a plan shall be included as wages, with the exception of such payments made under the provisions of a workers' compensation law. §60.2-229(B)(2)

Sick Pay-No Plan

Any amount paid by an employer because of sickness, or accident disability, or medical or hospitalization expenses where no formal plan exists will constitute taxable wages for six calendar months, with the exception of payments under a workers' compensation law. After the expiration of six calendar months, such sick pay does not constitute wages. §60.2-229(B)

Experience Rating

Experience rating is a system used to establish employer tax rates based on past employment and unemployment experience. §60.2-530, §60.2-531.

An employer's experience record consists of four fiscal years of:

- Taxable payroll on which taxes were paid on or before the September 30 immediately following the year the tax rate is for
- Charges for benefits paid

New Employers

The new employer base tax rate will be 2.5% until that employer becomes eligible for a computed rate. Eligibility for a computed rate occurs when an employer has a taxable payroll for at least a 12-month period ending June 30. Rates are then computed to be effective on the upcoming January 1. Foreign (out-of-state) contractors must pay the maximum tax rate for three years; their accounts are then eligible for computation. §60.2-526 (B), §60.2-527

Out-of-state contractors and highway contractors will be assigned the maximum allowable tax rate for three years. An "out-of-state contractor" is defined in § 54.1-1100 of the Code of Virginia. An out-of-state "highway contractor" is defined in § 33.1-337 of the Code and does not maintain a principal place of business in Virginia. Such employer need not be a member of any highway contractors' association.

Total Tax Rate

Total tax rate is computed by adding the (1) computed tax rate, (2) pool cost charge, and (3) fund building charge. Pool cost and fund-building charges are computed each year and are reflected on your annual tax rate notice. Tax rate notices for the upcoming year are mailed in December of each year.

How Your Tax Rate Is Computed

Employers determined eligible for computation are assigned a computed tax rate ranging from 0% to 6.2% (before pool and fund building charges, if applicable) and are notified by the "Tax Rate Notice," VEC-FC-29. Tax rates are computed, effective January 1 of each year, using the sum of the paid taxable payroll and benefit charges for the four-year period ending on the preceding June 30. The benefit ratio is obtained by dividing the total amount of benefits charged against the

account by the total of the paid taxable payrolls. To obtain a percentage, multiply the resulting figure by 100. Payrolls used for this calculation are those for which taxes were paid by September 30 prior to the year for which the rate is being computed.

The computed tax rate is determined by applying the resulting percentage and the trust fund balance factor to the rate tables provided by the law. In addition to the computed tax rate, employers may be assessed additional amounts for pool costs and fund building. These are explained below. §60.2-530, §60.2-531

Pool Cost Charge

The pool cost charge is added to all employers' tax rates to compensate for charges that cannot be assigned to any specific Virginia employer. This rate is computed every year based on these costs and other factors. §60.2-532

Fund Building Charge

When the trust fund balance does not exceed 50% of solvency, an additional charge must be placed on all employers. This charge is added to all existing rates in order to keep the trust fund solvent. §60.2-533.

Benefit Charges

When a claim for unemployment benefits is filed, the employer for whom the individual last worked for thirty days (or 240 hours), whether or not such days are consecutive, is the liable employer for the claim. As a result, that employer is charged for any benefit payments made to the individual.

If the following conditions exist, however, no benefit charges are assigned to the last thirty-day employer. The last thirty-day employer will be notified of the exception by Notice of Deputy's determination:

- if the individual's separation arose as a result of an unlawful act which led to confinement in jail or prison.
- if an individual left work to accept other work, genuinely believing the new work to be permanent.
- if an offer of rehire was declined because the individual was in training approved by the Commission, or if an individual left work voluntarily to enter approved training under Section 236 of the Trade Act of 1974, as amended.
- if an individual left work voluntarily with good cause due to a personal bona fide medical reason caused by a non-job related injury or medical condition.
 - If an individual was hired to replace a member of the Reserve of the United States Armed Forces or the National Guard called into active duty in connection with an international conflict and whose employment is terminated concurrent with and because of that member's return from active duty.
 - If an individual participating as an inmate in (i) state or local work release programs pursuant to Section 53.1-60 or 53.1-131; (ii) community residential programs pursuant to Section 53.1-177, 53.1-178, and 53.1-179; or (iii) any similar work release program, whose separation from work arose from conditions of release or parole from such program.
 - If an individual who was unable to work at his regular employment due to a disaster for which the Governor, by executive order, has declared a state of emergency, if such disaster forced the closure of the employer's business.

"Quarterly Charge Statements"(VEC-B-46) are mailed four times a year to advise employers of the individuals and the amount of benefits charged against their accounts. §60.2-528

ACQUISITIONS

Please be aware! The purchaser of a business or successor of such employer is personally liable to the extent of the assets of the business acquired for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner or employer. Please call (804) 786-3061 to check for unpaid account balance prior to acquiring a business. §60.2-523.B.2

Total Acquisitions

Employers acquiring a business have the option of receiving the experience rate of the predecessor's account, or receiving the new employer rate. Such notification to the Commission must be made within 60 days of such acquisition to receive the "new employer" rate. A previously liable successor retains its rate for the year of acquisition based on its own experience. A newly liable successor receives a rate for the year of acquisition based on the option chosen. §60.2-535.

Partial Acquisitions

An employer acquiring a portion of a business must have an authorized officer of the predecessor complete and sign the “Division of Taxable Payroll for Partial Acquisitions,” VEC-FC-45, within thirty days of notification by the Commission that the form is required. The predecessor must furnish the Commission with the division of the payrolls and benefit charges on that portion of the business transferred for the forty-eight-month period immediately preceding the date of acquisition.

If the predecessor does not provide this information within the thirty-day period, the newly liable successor is assigned the rate of the predecessor for the year of acquisition and the maximum rate for subsequent years until his own experience is adequate for a reduced rate. The previously liable successor would continue with its own experience record if the completed form is not furnished. §60.2-515, §60.2-535

SUTA Dumping

Transfer of a business for the purpose of obtaining a lower unemployment compensation tax rate; assignment of rates.

- A. If an employer shall transfer any trade or business to another employer where, at the time of transfer, there is substantially common ownership, management, or control of the trade or business, then the unemployment experience attributable to the transferred business shall also be transferred to, and combined with the unemployment experience attributable to, the employer to whom such business is transferred. If the sole or primary purpose of such transfer is to obtain a lower unemployment tax rate, that employer shall be subject to the penalties established by §60.2-536.3.
- B. If an employer shall transfer any trade or business to a person who is not otherwise an employer at the time of such transfer, and the sole or primary purpose of such transfer is to obtain a lower unemployment tax rate:
 1. The unemployment experience of the acquired business shall not be transferred to such person; instead, such person shall be assigned the higher of the transferred business~ calculated rate or the new employer rate under §60.2-526; and
 2. Such person shall be subject to the penalties established by §60.2-536.3.
- C. Any person who shall knowingly advise another person to engage in a transfer of any trade or business, where the sole or primary purpose of such transfer is to obtain a lower unemployment tax rate, shall be subject to the penalties established by §60.2-536.3.
- D. The Commission shall establish methods to identify and investigate the transfer or acquisition of a business for purposes of this section.
 1. For the purposes of determining whether there is “substantially common ownership, management, or control of two or more employers,” the Commission shall consider all relevant facts and circumstances, including the extent of commonality or similarity of: (i) ownership, (ii) any familial relationships, (iii) principals or corporate officers, (iv) organizational structure, (v) day-to-day operations, (vi) assets and liabilities, and (vii) stated business purpose.
 2. For the purposes of determining whether a business was transferred solely or primarily to obtain a lower unemployment tax rate, the Commission shall consider the facts and circumstances of the transfer, including: (i) the cost of acquiring the business, (ii) how long such business was continued, and (iii) whether a substantial number of new employees was hired to perform duties unrelated to the business activity conducted prior to the transfer.

Advisory opinion by the Commission

Upon application by an employer who is a party to a transfer or potential transfer of any trade or business, the Commission shall issue an advisory opinion as to whether such transfer constitutes a transfer pursuant to §60.2-536.1, or is solely or primarily for the purpose of obtaining a lower unemployment tax rate. The application shall be under oath or affirmation, in a form prescribed by the Commission, and shall fully set forth all relevant facts regarding the proposed transfer. The Commission may require such additional information and documentary evidence as deemed necessary for a fair and informed opinion. Such opinion shall be issued within 60 days after the Commission has received all of the information and evidence requested.

An employer who proceeds with the transfer of a trade or business in reliance upon a favorable advisory opinion issued under this section shall not subsequently be found to have violated the provisions of §18.2-204.3, and shall not be subject to the penalties of §60.2-536.3, provided such employer has made full disclosure of all relevant facts to the Commission. If an

employer disagrees with the Commission's advisory opinion, it shall have the right to a hearing and decision pursuant to §60.2-500, provided that an application for a hearing is filed with the Commission within 30 days from the date the advisory opinion was mailed. §60.2-536.3.

Violations; penalties

- A. If a person knowingly transfers, or attempts to transfer, any trade or business where the sole or primary purpose is to obtain a lower unemployment tax rate, or if a person knowingly advises another person to engage, or attempt to engage, in such transfer, such person shall be subject, in addition to the criminal penalties set forth in §18.2-204.3, to the following additional rate of contributions and civil penalty:
1. If the person is an employer, he shall be assigned the highest rate assignable under this chapter for the calendar year during which such violation or attempted violation occurred, and for the next calendar year immediately following such year. However, if the employer is already at such highest rate for that year, or if the amount of increase in the employer's rate would be less than two percent for any such year, then an additional rate of contributions of two percent of taxable wages shall be imposed for such year, which shall be paid into the benefit account of the Unemployment Compensation Fund pursuant to §60.2-301.
 2. If the person is not an employer, he shall be subject to a civil penalty of \$5,000, which shall be paid into the Special Unemployment Compensation Administration Fund pursuant to §60.2-314.
- B. Final orders of the Commission with respect to the provisions of §60.2-536.1 may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the Clerk of the Commission. Such orders may be appealed pursuant to §60.2-500. §60.2-536.4. Interpretation.

The provisions of §60.2-536.1 through §60.2-536.3 shall be interpreted and applied in such a manner as to meet the requirements contained in Public Law 108-295.

REPORTING REQUIREMENTS

Employment Records

The law requires that employers make their records available during reasonable hours to authorized representatives of the Virginia Employment Commission. §60.2-114. Employer payroll records must be maintained for auditing purposes for a period of four years from the date wages were paid or payable. Regulation 16 VAC 5-32-10.B

All employing units are required by law to maintain complete payroll records on all employees. These records must include:

- the employee's name and social security number,
- date hired, rehired, or returned to work,
- date and reason for separation from employment,
- the state in which services were performed,
- schedule of work hours per day,
- time lost when worker was unable to perform his usual duties, and
- wages payable and dates covered for each pay period, as well as total wages paid for each quarter including:
 - a) tips,
 - b) cash value of other forms of remuneration,
 - c) special payments such as annual bonuses, gifts, prizes, severance pay, and,
 - d) payments of advancement or reimbursement for business expenses. Regulation 16 VAC 5-32-10.A

Liability Determination Report

All employing units are required to file a "Report to Determine Liability for State Unemployment Tax," either on-line <https://www.ireg.tax.virginia.gov/VTOL/Login.seam> or by FormVEC-FC-27 including those acquiring a business, regardless of the type or duration of employment involved. This form is provided to the employer along with an instruction sheet for completing the form and gives the agency the information necessary to determine liability. Employers are notified of the results of the determination. Any employing unit disagreeing with the agency's determination may request a hearing before the Commission. The Commission's decision may be appealed to the Circuit Court of the City of Richmond. This form should be submitted at any time when liability is questionable. §60.2-500, Regulation 16 VAC 5-32.

The VEC FC-27 form (and instructions) is available online at www.vec.virginia.gov/vecportal/employer/vec_forms.cfm.

Employer's Quarterly Payroll and Tax Report

File on line at: <https://www.ireg.tax.virginia.gov/VTOL/Login.seam>. Liable employers are required to file an "Employer's Quarterly Report," (VEC-FC-20 and VEC-FC-21) each quarter. These forms are used to report wage, tax, and employment information, and are due at the end of the month following the end of a calendar quarter. The VEC FC-20-21 forms, and instructions, are available on the Employer Services page at www.VaEmploy.Com §60.2-512 Regulation 16 VAC 5-32.

Electronic Media

Effective January 1, 2009, Employers who report 100 or more employees in any calendar quarter in 2009, or thereafter, shall file quarterly reports on an electronic medium using a format prescribed by the Commission. 60.2-512.B. Employers with less than 100 employees are encouraged to use electronic medium when possible. The following types of media are acceptable to the VEC:

- CD-ROM
- Upload a file and report using *iFile* at: <https://www.business.tax.virginia.gov>
iFile is preferred because it more secure.

NOTICE, for the protection of your employee information - Please encrypt your files if sending by mail and email us at: protectfile@vec.virginia.gov to provide the password. Please list the date file mailed, quarter year it is for, employer # and name, contact name and phone # both on the media and in the email.

For information on magnetic reporting format visit our website at:

<http://www.vec.virginia.gov/vecportal/employer/pdf/MagMediaFiling6-09.pdf>, or dial (804) 786-4207 or (804) 786-2202.

Every employer in active status, who did not file electronically in the previous quarter, is mailed a form pre-printed with the employer's name, address, account number, and the rate at which taxes are to be computed. If you do not receive the form, please go to our website and print it off.

NOTE: Failure to receive Forms VEC-FC-20 and VEC-FC-21 does not relieve the employer of the responsibility for filing those reports.

Employers are required to list the name, social security number, and total wages paid to each covered employee during the calendar quarter on the "Employer's Quarterly Report," VEC-FC-20 and VEC-FC-21. Include all wages paid both in cash and in any remuneration other than cash. All severance pay shall be reported as wages on Quarterly Reports. Extreme care should be taken to ensure that the information provided is correct as it is used in processing claims for unemployment benefits. §60.2-512, §60.2-229, Regulation 16 VAC 5-32-10.A. Quarterly wage reports by magnetic media are acceptable and required for employers of 100 employees or more effective 2009. . Magnetic reporting in the format prescribed by the Social Security Administration publication 'Magnetic Media Report and Electronic Filing (MMREF)' is acceptable. Additional information is available on the Social Security Administration web page at <http://www.ssa.gov/employer/>. Data may be submitted to the VEC on magnetic media 3½-inch diskette, or compact disk.

Please secure any data sent to the VEC on media by encryption. Please call (804) 786-4207 or 786-2202 to receive instructions on how to provide the key or password.

For additional information contact the Tax and Wage Information Processing Unit for full technical specifications. The taxable wage base in Virginia is \$8,000. Unemployment insurance tax must be paid on the amount of annual wages paid to an individual in any calendar year up to the taxable wage base. §60.2-229.B. Employers who discontinue or sell their business should notify the Commission within thirty days. Reports and taxes are due on the usual due dates. Regulation 16 VAC 5-32-20.D.

Corrections and Adjustments

If you find that a previously filed quarterly report was incorrect, you must notify the Commission in writing and furnish the correct information. In the case of an underpayment, remittance should be made as soon as possible since interest begins accumulating after the due date. Do not use the "Employer's Quarterly Report," VEC-FC-20 and VEC-FC-21, for making adjustments. If you are not able to pay the tax due, the payroll and tax report must still be submitted so that these wages may be entered in our database for claims purposes. If you question your liability for benefit charges, the reports and the remittance should be submitted until the discrepancy is resolved.

Penalties and Interest

A penalty of \$75 per report is charged for late tax and/or payroll reports. Newly covered employers must file all quarterly tax reports by the due date of the quarter in which an employer account number is assigned to avoid the penalty on each report. A penalty of \$25 is charged for each dishonored check. Interest is charged at the rate of 1.5% per month until payment is received. Any part of a month will be considered as a full month for the purpose of computing interest. §60.2-513, §60.2-519

Injunctions

In extreme cases where the agency cannot secure compliance, it may petition the courts to issue an injunction prohibiting the employer from doing business until the employer has complied with the law. §60.2-522

Audits of Employer Records

In order to ensure compliance with taxing provisions of the state law and to meet Department of Labor requirements, audits are conducted on employer records periodically. An audit may reveal an underpayment or overpayment of taxes by an employer. The tax representative will assist in making the proper adjustments to the account. §60.2-114

All VEC tax representatives carry official, agency issued, identity documents. Do not hesitate to ask for them.

BENEFITS INFORMATION

Minimum Qualifying Wages 2009: Total of \$2,700 paid in at least two quarters of the base period.

Weekly Benefit Amount - effective with claims filed on or after July 5, 2009: Minimum: \$54 Maximum: \$378.00

Filing a Claim

When an individual files a claim for benefits, his eligibility is determined by three factors: 1. monetary eligibility, 2. the reason for separation, and 3. weekly eligibility.

Monetary Determination

To establish a claim, an individual must have sufficient wages in covered employment during the base period. The base period is the first four of the last five completed calendar quarters preceding the week in which the claim is filed. If the claimant has earned insufficient wages in the first 4 of the last 5 completed calendar quarters to become eligible for benefits, then such claimant's "base period" shall be the 4 most recent completed calendar quarters immediately preceding the first day of the claimant's benefit year. (See the Appendix at the end of this document for current qualifying requirements and minimum and maximum benefit amounts.) §60.2-204, §60.2-612

Once a claim is established, it remains in effect for one year. During that year, the claimant may, if he is unemployed and otherwise eligible, receive weekly benefits until he exhausts his entitlement. §60.2-206, §60.2-602

Employer's Report of Separation & Wage Information

At the time a claim is filed, a request for information is mailed to the last thirty-day or 240 hour employer, and to any subsequent less-than-thirty-day/240-hour employer. This form is called "Employer's Report of Separation and Wage Information." It should be completed and returned by the return date shown on the form. Otherwise the Claims Deputy may not receive the information in time to be considered in determining the claimant's eligibility to receive benefits. §60.2-619

The report will provide you with the date and time of the hearing. It allows both the employer and the claimant an opportunity to present their sides of the case and offer rebuttal. If you do not wish to participate, your written statement will be considered in determining eligibility. §60.2-619, Regulation 16 VAC 5-80-10.

Unemployment claims may cost your company money. If you do not believe that an employee meets the criteria for receiving benefits you should participate in any hearing. Please see "frequently asked questions" on our website for additional information. <http://www.vec.virginia.gov/vecportal/faq.cfm>.

Predetermination Fact-finding Interview

Whenever a separation issue exists, a fact-finding interview is scheduled approximately two weeks from the date a claim is filed. Both the claimant and employer are notified of the date and time of the hearing. It is your responsibility to make sure the VEC has the correct contact person and telephone number prior to the hearing. This interview is conducted by

telephone the employer is not required to participate. In many cases the deputy renders the decision on the same date the hearing is conducted. Any written information (reprimands, warnings, attendance records, signed policy statements, etc.) submitted will receive full consideration. The employer's participation adds weight to the case and provides the opportunity to offer rebuttal to any statement made by the claimant at the interview. §60.2-619, Regulation 16 VAC 5-80-20

Nonmonetary Determination

Whenever any eligibility issue arises, a Claims Deputy gathers the facts needed to determine whether benefits should be denied or allowed. The Deputy then issues a "Notice of Deputy's Determination," VEC B-54. This notice includes a summary of the facts surrounding the case and the section of law that pertains to that issue. Finally, it states the Claims Deputy's decision pertaining to eligibility and the procedure to follow should an interested party wish to appeal. §60.2-619, Regulation 16 VAC 5-80-30.

A claimant who is initially determined eligible to receive benefits by the Commission may continue to receive them until an appeal is decided against him. If he is finally found to be ineligible, he will be required to repay the benefits received. If an appeal is decided in favor of the claimant who once was disqualified, the individual may be paid benefits properly claimed for the time the claim was on appeal. §60.2-619, §60.2-633

Disqualifications or indefinite denials to receive benefits remain in effect until the claimant is employed thirty days (or 240 hours) with one employer and becomes unemployed through no fault of his own. An individual who is qualified to receive benefits must meet weekly eligibility requirements before benefits are paid. Failure to meet these requirements can result in a denial of benefits for the week(s) in which the failure occurred. §60.2-612, §60.2-618

SEPARATION ISSUES

Discharge

The claimant shall be disqualified if it is determined by the Commission that he was discharged for misconduct in connection with work. The employer must show that the claimant deliberately violated an established rule or intentionally committed an act in disregard of the employer's interests. §60.2-618

Voluntary Quit

The claimant shall be disqualified if it is determined by the Commission that he voluntarily left his employment without good cause. In disputes over whether a separation was a quit or discharge, the employer bears the burden of establishing it as a quit. Once done, the claimant must show that he was compelled without reasonable alternative to leave his employment. The law specifically states that leaving employment to enter into self-employment or to follow or accompany one's spouse to another locality does not constitute good cause. §60.2-618

Voluntary Quit/Discharge

The claimant is eligible for only two weeks of benefits if he gives notice of resignation but is terminated immediately by the employer and is not allowed to serve out his notice. §60.2-612. This provision applies only if the claimant cannot establish good cause for leaving work pursuant to §60.2-618, and was not discharged for misconduct as provided in §60.2-618.

Labor Dispute

The claimant may be held ineligible if his unemployment is due to a labor dispute in active progress. §60.2-612

WEEKLY ELIGIBILITY REQUIREMENTS

Failure to Accept Suitable Work

If the claimant refuses suitable work without good cause while claiming unemployment benefits, he may be disqualified from receiving further benefits. Many factors are considered in determining suitable work including work experience, wages, the claimant's health, safety, physical fitness, the degree of risk to his moral well-being, and the distance of the work from his home. Work is not considered suitable if it is available due to a strike or lockout, if the conditions of work are substantially less favorable than those prevailing for similar work in the community, or if the claimant would be required to quit or to join a union. A disqualification begins with the first day of the week in which the failure to accept work occurred. §60.2-618

Able and Available

The claimant shall be held ineligible for any week in which he is not able and available for work. He must be physically and

mentally capable of performing work and he must be willing to accept such work without undue restrictions. He also must make an active, personal search for work each week and provide a list of all job contacts to the Commission. The Commission verifies selected contacts each week. Individuals who falsify such contacts may be prosecuted or disqualified from receiving further benefits for a full year. §60.2-618

Waiting Period

For each benefit year a claimant must serve a waiting period, which is not paid. The waiting period is the first week claimed in which all the eligibility requirements have been met. Only one waiting period week is served in a benefit year. §60.2-612

Earnings

A claimant must report gross earnings, including holiday/vacation pay, for each calendar week while he is claiming benefits. If he earns less than his weekly benefit amount, his benefits are reduced by the amount that his earnings exceed \$50. All wages earned during a shift that begins on Saturday and ends on Sunday may be reported for the week in which the majority of such wages were earned. §60.2-226, §60.2-603

Severance Pay

Severance and dismissal pay is treated as wages and may be allocated by the employer for any period following separation provided it is at a weekly rate at least equal to the average weekly wage received by the employee during the last calendar quarter preceding the separation. Note the allocation on the employers separation report and return it promptly because if no allocation is made by the employer, the severance pay will be allocated to the last day of work. §60.2-229.

If you have questions regarding the treatment of severance pay, contact the Manager of the VEC Workforce Center nearest you. A full listing of VEC office locations, phone numbers, and contact names are listed on the VEC website.

Pension

Only 50 % of the weekly Social Security pension amount is deductible from UI benefits. Once the UI Trust Fund reaches 50% solvency, there will be no deduction of a Social Security pension. If a claimant is receiving a pension based on his previous work from a base-period or chargeable employer and the weekly amount is less than his weekly benefit amount, his benefit amount is reduced dollar-for-dollar by the amount of his pension. If the pension exceeds his weekly benefit amount, he is not eligible for benefits. Service-connected veterans' disability payments from the Veterans Administration are not deducted from the weekly benefit amount. Certain workers' compensation payments are similarly exempt. §60.2-604

Partial Unemployment

Partial unemployment occurs during any week in which an individual works, but at reduced hours due to a lack of full-time work. The claimant may be eligible for benefits if he earns less than his weekly benefit amount, but not solely because he did not work on a legal holiday as defined in Section 2.1-21 of the Code. An employee who receives only holiday pay without working in a particular week cannot be considered partially unemployed and must instead report to a commission local office to file a part-total claim for the week. §60.2-226, Regulation 16 VAC 5-10-10.

When an individual files a claim for partial unemployment, a "Notification of Claim(s) Filed for Benefits" (VEC-B-32) is mailed to the employer by the Commission. This notice advises the employer of the filing of the claim and the claimant's weekly benefit amount. The employer must furnish the claimant with a "Statement of Partial Unemployment," VEC-B-31, within fourteen days of the end of the pay period in which partial unemployment occurred. Regulation 16 VAC 5-60-20. This form may be obtained from your nearest VEC office, or on the VEC website.

Mass Separations

A mass separation occurs whenever twenty-five or more workers in an establishment are laid off, either temporarily or permanently, at the same time. Employers can file mass claims on behalf of their employees online at www.vec.virginia.gov/vecportal/unins/empfile.cfm. Be sure to notify the VEC office nearest your place of employment prior to you filing the mass claims. Regulation 16 VAC 5-60-10.C.

Separation Due to a Labor Dispute

You should notify the Commission of the existence of the labor dispute and the approximate number of workers affected. The Commission may request the names of the workers ordinarily attached to the department or establishment affected by the labor dispute. Regulation 16 VAC 5-60-10.C.

Interstate Claims

If an individual earns base-period wages in covered employment in Virginia and moves to another state, he may file an interstate claim against the state of Virginia. Also, an individual may file a claim in Virginia against another state if base-

period wages were earned in the other state. As an interested party, you may be asked to furnish separation information to Virginia or to any other state. Information should be furnished within the time limits specified on the form to ensure that a proper eligibility determination is made. §60.2-116, Regulation 16 VAC 5-70-10.

Overpayments

If a claimant is paid benefits and is later determined to be not entitled, he is required to repay those benefits. Benefits will not be paid until the overpayment is satisfied unless the overpayment was the result of the Commission's administrative error. In that case, benefits are paid at 50% of the weekly entitlement until the overpayment is satisfied. Reversed appeals are not classified as administrative errors. Collection methods include billing notices, repayment agreements, offsets of other benefit entitlement, the interception of state income tax refunds, and referrals to a collection agency. Interest and the cost of collection may be added to the overpaid amount. §60.2-633

Fraud: Detection, Prevention and Penalties

The VEC unemployment compensation procedures contain several safeguards against fraudulent claims:

1. A "Report of Separation and Wage Information" is sent to the last employer(s) for whom the claimant worked. The purpose of the report is to notify the employer that a claim has been filed to determine why the claimant is unemployed. §60.2-619, Regulation 16 VAC 5-60-10.B
2. A random sample of job contacts is verified by telephone or by mail every day. You can assist us by keeping a daily record of those individuals who contact you in-person for work. §60.2-612
3. The Eligibility Review Program includes in-person interviews with claimants regarding their job search techniques and their eligibility.
4. Automated benefit payment files and wage records are cross-matched each quarter to discover those who are claiming benefits while working. These claims are reviewed to see if the claimant is reporting his earnings accurately. You may receive a "Request for Wage Information", VEC- BPC-65, from our Benefit Payment Control Unit asking you to verify earnings.
5. The Quality Control Program provides for a review of our claim process. A random sample of claims undergoes a thorough investigation by our quality control auditors to determine if the claims were processed and paid correctly.
6. Our Benefit Payment Control Unit investigates and prosecutes those individuals suspected of fraud. The penalties for fraud are severe.
7. The unemployment benefit data files are cross matched with the new-hire directory furnished by the Department of Social Services to determine if a claimant has returned to work and is continuing to claim benefits.

Claimants who falsify information to the Commission may be prevented from drawing benefits for a one-year period and, if convicted, the courts may impose additional penalties or fines, imprisonment, or both. Any benefits improperly paid must be repaid to the Commission. §60.2-618, §60.2-632, §60.2-633, §60.2-635

The Appeals Process

The claimant and the employer have the right to challenge any adverse decision of the agency. However, appeals must be filed within prescribed time limits. §60.2-500, §60.2-528, §60.2-536, §60.2-619, §60.2-620, §60.2-621, §60.2-622, §60.2-625, Regulation 16 VAC 5-80.

Nonmonetary Determination

The deputy issues a "Notice of Deputy's Determination," VEC-B-54, to the claimant, the last 30-day (or 240-hour) employer, and, if appropriate, any less-than-30-day/240-hour employer. If any party disagrees with the determination, he may appeal within 30 days of the date the determination is mailed. An appeal may be filed in person or by sending a written statement to the Appeals Section, Post Office Box 1358, Richmond, Virginia 23218-1358, or to the VEC office where the claim was filed. The claimant's social security number should be included in the letter. §60.2-101, §60.2-619, Regulation 16 VAC 5-80-10.

First Level Appeals

The first level of appeal includes a hearing before an Appeals Examiner. A tape recording is made of sworn testimony from parties and witnesses appearing at the hearing. This hearing is usually the only opportunity to present evidence and to examine and cross-examine witnesses. A written decision is issued to the parties either affirming or reversing the Deputy's determination. All parties have 30 days from the date of mailing to file an appeal with the office of Commission Appeals.

If the parties are located in different states or a compelling circumstance makes attendance at an in-person hearing unreasonably difficult, a telephonic hearing where both parties participate by telephone conference call may be scheduled.

In the alternative, a “split” hearing may be scheduled which would allow the party, representative, or witness who could not attend in person to participate by telephone. Each party will receive a hearing notice instructing them where to report or how to participate telephonically. §60.2-619, §60.2-620, Regulation 16 VAC 5-80-20.

Commission Appeals

The Commission appeal process usually consists of a review of the administrative record. However, any party may petition for oral argument within fourteen days of the date of mailing of the “Notice of Appeal.” In this proceeding, all parties may appear before a Special Examiner in our courtroom in the Richmond central office.

A request to present additional testimony and evidence may be made when the petition for oral argument is filed. The Special Examiner will issue a written decision that becomes final, if not appealed, ten days after the date of mailing. If a further appeal is desired, request for judicial review must be filed with the Circuit Court in the county or city in which the claimant was last employed within 30 days after the Commission decision becomes final. Be specific in making a request to present additional testimony; otherwise it will most likely be denied. §60.2-622, §60.2-625, Regulation 16 VAC 5-80-30.

SPECIAL PROGRAMS AND SERVICES

Extended Benefits (EB)

The Extended Benefits program provides up to thirteen additional weeks of benefits beyond the maximum twenty-six weeks provided under the Virginia Unemployment Compensation Act. Extended benefits are payable to those who exhaust their regular benefits when the insured unemployment rate equals or exceeds six percent for thirteen consecutive weeks. Virginia is reimbursed by the federal government for 50% of extended benefits paid. Employers are charged the remaining 50%. Governmental agencies, however, will be charged 100% for all weeks paid under extended benefits.

Trade Readjustment Allowances (TRA)

Workers who lose their jobs as a direct result of import competition may be eligible for special benefits under the Trade Act of 1974, as amended. Affected workers must file a “Petition for Adjustment Assistance” and be certified by the United States Department of Labor to be eligible for benefits. This form may be obtained by contacting the nearest VEC Workforce Center.

Benefits include Trade Readjustment Allowances (income support payments) occupational training, job search allowances, and relocation allowances. The financial assistance provided to workers is federally funded and is not charged against the employer’s tax rate.

Disaster Unemployment Assistance (DUA)

The Disaster Relief Act of 1974 provides assistance in the form of temporary income to individuals who are unemployed as a result of a major disaster. DUA becomes available only after the President declares a specific geographic area authorized to receive federal assistance. Contact the nearest Virginia Employment Commission office to obtain more information.

An unemployment insurance claim will be filed initially, and if the claimant is monetarily qualified they will receive regular unemployment insurance benefits, which are charged to the last 30-day/240-hour employer. However, effective July 2004, benefit charges are waived if an individual who was unable to work at his regular employment due to a disaster for which the Governor, by executive order, has declared a state of emergency, if such disaster forced the closure of the employer’s business, and if the individual returned to his regular full-time employment once the business reopened.

In no case shall more than four weeks of benefit charges be waived. If the claimant does not qualify monetarily for unemployment insurance, a DUA claim will be filed. DUA is paid solely from federal funds and does not affect employer tax rates.

Other Special Benefits Programs

From time to time, Congress may enact special unemployment benefits programs because of extremely high levels of unemployment nationwide. The most recent example is the Emergency Unemployment Compensation (EUC) program that became effective July 6, 2008. Usually, the federal government for such special additional benefits reimburses Virginia and the benefits are not charged to employers.

Job Seeker Services

Virginia employers save time and money on recruitment and training of new personnel when they use the VEC. The Virginia Employment Commission Workforce Centers not only serve as a job referral source to individuals seeking employment, but also assist employers in filling job vacancies.

Screening and Referral

Throughout the state, VEC Workforce Centers have job seekers registered with them who possess skills and experience in a wide variety of occupational areas. These individuals have experience in almost any area: professional, managerial, sales, service, and manufacturing, just to name a few. There are also individuals who are semi-skilled or who may be seeking their first employment opportunity.

An employer with a job opening can place an online job order through the Virginia Workforce Connection at, <https://www.vawc.virginia.gov/> or directly with the nearest VEC Workforce Center (a listing is available on line) at: http://www.vec.virginia.gov/vecportal/field/field_offices.cfm. VEC staff will match the skills and experience required for that particular opening with the skills and experience of registered job seekers. After screening, the office will refer the specific number of job seekers requested that match the job requirements. This allows employers to interview only those individuals having the particular qualifications needed for the job opening.

Listing jobs with the VEC has economic impact on Virginia. Because unemployment insurance claimants are among those registered with the Job Service, their skills and experience are constantly being evaluated against listed jobs. This means that based on their qualifications, they may be referred and hired more quickly. Returning an individual to the work force reduces unemployment, helps maintain solvency in the trust fund, and reduces potential tax liability for employers.

Testing

The Job Service presently administers clerical skills tests. Clerical tests measure proficiency in regular and statistical typing; regular, medical, and legal spelling; and dictation. The use of valid tests will lead to lower training costs and fewer employee turnovers for employers.

Work Opportunity and Welfare to Work Tax Credit (WOTC)

The Small Business and Work Opportunity Act of 2007 reauthorized the Work Opportunity Tax Credit (WOTC) and the Welfare-to-Work Tax Credit (WtW) for employers who hire long-term welfare recipients. Long-term recipients can earn their employer a tax credit of up to \$4,000 for their first - and \$5,000 for their second - year of employment. Welfare recipients and members of other target groups can earn employers a WOTC credit of up to \$2400 in the first year. The number of new hires who can qualify employers for these credits is unlimited.

For specific details about the benefits of this program, and the requirements for eligible employees, contact the Virginia Employment Commission (VEC) at 804-786-2887.

Employers must apply for and receive certification from the VEC that their new hire belongs to one of nine groups of jobseekers eligible for the WOTC or WtW programs before claiming it on their federal income tax return.

To apply employers need only complete two single-page forms:

1. **IRS form 8850.** This form must be mailed to the VEC no later than the 28th day after the job applicant begins work.

The IRS form 8850 is available on line at: <http://www.irs.gov/pub/irs-pdf/f8850.pdf>

Instructions for the form are at: <http://www.irs.gov/pub/irs-pdf/i8850.pdf>
or, call the IRS at 1-800-829-3676.

2. **U.S. Department of Labor form ETA 9061.** Access this form at: <http://www.vec.state.va.us/pdf/eta9061.pdf>

To receive this form by mail call the VEC WOTC unit at 804-786-2887, or fax your request to 804-786-1285.

Employers should *mail* the signed IRS *and* ETA forms to:

Virginia Employment Commission
WOTC Coordinator - Room 209
P. O. Box 1358
Richmond, VA 23218-1358

For information about recent law changes log on to: www.doleta.gov/business/incentives/opptax

Foreign Labor Certification Program

Employers requesting labor certification for the temporary or permanent employment of foreign workers are required to offer prevailing wages and working conditions for that particular occupation and to demonstrate that no similarly employed U.S. worker will be adversely affected.

Applications for Permanent Employment Labor Certifications must be filed directly with the U. S. Department of Labor, **not** with the Virginia Employment Commission. The form used for filing for a permanent labor certification (ETA Form 9089) and instructions can be found at: <http://www.foreignlaborcert.doleta.gov/form.cfm>

The Virginia Employment Commission, under a grant from the U.S. Department of Labor (DOL), will continue to provide Prevailing Wage Determinations to employers for Permanent and H-1B Labor Certification programs.

Find the Prevailing Wage Request Form at: <http://www.vec.virginia.gov/vecportal/employer/pdf/pwreqh2b.pdf>

Temporary Labor Certification (H-2B) Nonagricultural

The H-2B nonimmigrant program permits employers to hire foreign workers to come to the U.S. and perform temporary nonagricultural work, which may be (1) one-time, (2) seasonal, (3) peak load or (4) intermittent. There is a 66,000 per year limit on the number of foreign workers who may receive H-2B status during each fiscal year (October 1 through September 30).

Applications for Temporary Employment Labor Certifications (H-2B) Nonagricultural must be filed directly with the U. S. Department of Labor, **not** with the Virginia Employment Commission. The form used for filing for a temporary labor certification (ETA Form 9142 plus APPENDIX B.1) and instructions can be found at: <http://www.foreignlaborcert.doleta.gov/form.cfm>

For more information, visit the Department of Labor's website at <http://www.foreignlaborcert.doleta.gov/> or contact the Virginia FLC Unit in Richmond. (804) 786-0200, (804) 786-2340 FAX. The mailing address is:

Virginia Employment Commission
Foreign Labor Certification Unit Room 308
P.O. Box 1358
Richmond, VA 23218-1358

Prevailing Wage Request Form: <http://www.vec.virginia.gov/vecportal/employer/pdf/pwreqh2b.pdf>

Important Notice: The Virginia Department of Motor Vehicles (DMV) has established an informational web page that lists the requirements for obtaining a valid, first-time Virginia Drivers License, Learners Permit, or Identification Card. Questions and answers about "Legal Presence in Virginia", issues and actions, and press release information may be found at: <http://www.dmv.state.va.us/webdoc/citizen/drivers/index.asp>

Veterans Employment Services

U.S. Military Veterans, receive preference in all Employment Service programs. Disabled veterans, Campaign Badge veterans, and Transitioning Service Members are first priority and all resources of the VEC are available to assist veterans in job referral, job training and placement. Local Veterans Employment Representatives (LVER) and Disabled Veterans Outreach Program (DVOP) are available in most VEC Workforce Centers. They work with employers and veteran job seekers to match qualified veterans to the employer's job openings. To obtain veterans services, or for more information, log on to <http://www.vec.virginia.gov/vecportal/seeker/veteransvcs.cfm>. Additional information concerning transition services and veteran's rights, benefits, and status, are available from the U.S. Department of Labor, Veterans' Employment and Training Service at: <http://www.dol.gov/vets/> or the Department of Veterans Affairs at: <http://www.dvs.virginia.gov/>

Veterans Assistance

The VEC also provides veteran assistance at the following Virginia Military bases. Call for days and hours of operation.

Fort Eustis
601 Washington Boulevard
Building 601, ACS
Fort Eustis, 23604
(757) 878-0906
(757) 878-0908 FAX

Fort Lee
1403 Mahone Avenue
Building 9028
Fort Lee, 23801
(804) 862-6106
(804) 734-6603 FAX

Naval Base Norfolk
7928 14th Street
Suite 154
Norfolk, 23505
(757) 440-4024
(757) 440-4026 FAX

Trade Adjustment Assistance (Trade Act of 1974, as Amended):

The Trade Adjustment Assistance (TAA) program is a program established under the Trade Act of 1974, as amended. The TAA Program provides aid to workers who lose their jobs or whose hours of work and wages are reduced as a result of increased imports.

The goal is to help such laid-off workers return to suitable employment as quickly as possible. TAA offers a variety of benefits and reemployment services to assist unemployed workers prepare for and obtain suitable employment. Workers may be eligible for training, job search and relocation allowances, income support and other reemployment services.

Company officials may file a petition for certification as an affected employer or a petition may be filed by a group of three or more workers, by their union or other authorized representative. The U.S. Department of Labor in Washington, D.C., makes the final determination on certifications. Workers on whose behalf a petition is filed must be, or have been, employed regularly at the firm or subdivision identified in the petition. Workers employment must be, or have been, related to the production of articles (products) described in the petition.

The Virginia Employment Commission (VEC) administers this program through its Workforce Center network. For additional information or assistance, please contact the VEC Trade Act Unit in Richmond at (804) 786-8825 or the nearest [VEC Workforce Center](#). Additional information and petition forms in English and Spanish are available from the U.S. Department of Labor website at <http://www.doleta.gov/tradeact/>.

Economic Information Services

Labor Market and Demographic Information -The Virginia Employment Commission's Economic Information Services Division is prepared to assist employers in developing reports on the labor market and demographic data.

The following publications highlight Labor Market Information (LMI) use and clarify those specific LMI resources that meet your needs. For more information visit our Website at <http://velma.virtuallmi.com/>.

Wage Data - by occupation/industry

- Occupation Wage Data—biannual and hourly entry level, mean, median, and other wage statistics by occupation produced for Virginia statewide, Metropolitan Statistical Areas (MSAs), and Workforce Investment Areas (WIAs).
- QCEW-Quarterly Census of Employment and Wages—quarterly employment and wage data by industry, for all counties and cities, MSAs, WIAs, Planning District Commissions (PDCs), and statewide.

Population and Labor Force Data - population, civilian labor force, employment, unemployment, and unemployment rates.

- Local Area Unemployment Statistics (LAUS)—monthly and annualized estimates for all counties, cities, MSAs, Labor Market Areas (LMAs), PDCs, WIAs, and the state.
- Virginia Population Projections annual data for 2010-2030—by age cohorts, gender, ethnicity, for counties, cities, MSAs, PDCs, WIAs, and the state.
- Census data for affirmative action planning—counties, cities, MSAs, and the state.

Economic Indicators - study of current and projected economic conditions.

- Virginia Economic Indicators—quarterly publication
- Economic Assumptions, U.S. and Virginia—annual publication
- Business Resource Directory—a guide to setting up and doing business in Virginia, including sources of assistance.
- Industry and Occupation Projections—(2002-2012)—potential labor demand.

The Economic Information Services' Labor Market and Demographic Analysis Unit is ready to assist employers with specific LMI/demographic technical assistance and resources for expansion, relocation, and/or establishment of a business in Virginia. Call (804) 786-8223 or 786-8624, (804) 371-0412 fax. The mailing address is:

Virginia Employment Commission
LMI & Demographic Analysis Unit Room 213
P.O. Box 1358
Richmond, VA 23218-1358

Worker Adjustment and Retraining Notification (WARN)

A federal law, the Worker Adjustment and Retraining Notification Act, requires employers to give a 60 day advance notice of closings or major layoffs. Oversight of this program, as well as the Rapid Response and Dislocated Worker Unit, are under the direction of the Chancellor of the Virginia Community College System. All questions regarding the rules and regulations and compliance of this program should be directed to: 804-371-2359

Workforce Development Services
Virginia Community College System
1001 East Broad Street Suite 222
Richmond Virginia 23219

GLOSSARY OF TERMS

Acquisition

The transaction by which an individual or organization obtains the organization, trade, business, or assets of another individual or organization and, thereby, becomes subject to the Virginia Unemployment Compensation Act. §60.2-210

Agricultural Labor

Any services performed on a farm or in farm-related work in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market of any agricultural or horticultural commodity. §60.2-201

Audit

A formal, official examination and verification of the records of an employer.

Base Period

The first four of the last five completed calendar quarters preceding the week in which the claim is filed. If the claimant has earned insufficient wages in the first 4 of the last 5 completed calendar quarters to become eligible for benefits, then such claimant's "base period" shall be the 4 most recent completed calendar quarters immediately preceding the first day of the claimant's benefit year. §60.2-204

Benefit Ratio

The percentage equal to the sum of the benefit charges for the four-year period ending on June 30 preceding the year for which the tax rate is being computed divided by the total of the paid taxable payrolls for the same period. §60.2-530

Benefit Year

The fifty-two-week period beginning with the first day of the week in which an individual files a new claim. §60.2-206

Calendar Quarter

The period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st.

Claimant

An unemployed individual who files a claim for unemployment compensation.

Corporation

An entity formed and authorized by law to operate and conduct business in the same manner as an individual.

Delinquent Employer

An employer who has failed to submit required quarterly tax reports, payments, interest, and/or penalties by the due dates. §60.2-513, §60.2-538

Duration of Benefits

The number of total weeks of benefits a claimant may potentially draw during a benefit year. §60.2-602, §60.2-607

Employer

An employing unit that meets the liability requirements under the law and is required to pay unemployment insurance taxes. §60.2-210

Employing Unit

Any individual, organization, or governmental entity that has one or more individuals performing services for it within the state. §60.2-211

Employment

Any service performed by an individual for remuneration under any written or oral contract of hire with an employing unit. §60.2-212 (For references on exemptions to “employment,” see Section §60.2-219.)

Experience Rating

A system used to establish employer tax rates based on past employment and unemployment experience. §60.2-530, §60.2-531

Extended Benefits

Unemployment benefits paid to a claimant after regular benefits have been exhausted, during periods of prescribed high national or state unemployment levels. §60.2-610, §60.2-611

Federal Employer Identification Number (FEIN)

The registration number assigned by the Internal Revenue Service to an employer.

FUTA (Federal Unemployment Tax Act)

The tax imposed by the federal government on employers with respect to having individuals in their employ. §60.2-218

Inactive Account

Status assigned to an employer’s account when it has been found that the employer no longer has employees and, therefore, no payroll report or taxes to submit.

Insolvent

The condition of a legal entity that is unable to pay its debts.

Insured Employment

Term used to describe employment covered by the Unemployment Compensation Act of Virginia or any other state.

Interest

Monetary charge, which is computed and added to the amount of taxes, owed and remaining unpaid after the date such taxes were due. §60.2-519

Last Thirty-Day Employer

The most recent employer for whom a claimant performed services for any part of a day for thirty days, whether or not such days were consecutive, or a total of 240 hours.

Liability Date

The date that an employer meets the statutory criteria for liability coverage with the Virginia Employment Commission.

Maximum Benefit Amount

The total amount of benefits that an individual may receive during his benefit year. (This amount is determined by multiplying his weekly benefit amount and the number of weeks of benefits for which he may qualify.) §60.2-607

Tax Report

The portion of the Employer’s Quarterly Report (Forms VEC FC-20/21) that states the total wages paid, the amount of taxable wages, and taxes due by the employer for the quarter covered by this report. §60.2-512

Unemployment

An individual is totally “unemployed” during any week in which he performs no services and with respect to which no wages are payable to him; he is partially “unemployed” if he works less than his full-time hours and receives less wages than his weekly benefit amount. §60.2-226

Waiting Week

The first week of eligibility in a claim year is a waiting week and is not paid. Only one waiting period week is served in a

benefit claim year. §60.2-612.9

Week

Seven consecutive days beginning on Sunday and ending the following Saturday at midnight. §60.2-230

Weekly Benefit Amount (WBA)

The weekly benefits payable to a totally unemployed individual. The amount is based on prior earnings. §60.2-602

CONTACT INFORMATION

VEC Workforce Center Locations

Visit the VEC web site http://www.vec.virginia.gov/vecportal/field/field_offices.cfm for a complete listing of locations, addresses, phone numbers, and hours of operation. Consult your local telephone directory, or dial 1-800-897-5630 and choose the option to obtain the location of the office nearest you.

VEC Administrative Office Location:

703 East Main Street
Richmond, VA 23219
(Corner of North 7th Street & East Main Sts.)

Mailing address:

Virginia Employment Commission
P.O. Box 1358
Richmond, VA 23218-1358.

Telephone numbers:

Direct access to the VEC Administrative Offices in Richmond: 804-786-1485

Virginia Relay (Telecommunications Relay Service)
press "711"

Toll free access: 800-828-1120 (TDD) or 800-828-1140 (voice)

The Virginia Employment Commission is an equal opportunity employer and program provider. Auxiliary aids and services are available upon request to individuals with disabilities. Any reasonable accommodation for persons with disabilities may be requested by contacting the manager of the VEC Workforce Center location where you are seeking services.